

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of)

Electronic Filing of Documents in)
Rulemaking Proceedings)

GC Docket No. 97-113

COMMENTS OF U S WEST, INC.

U S WEST, Inc. ("U S WEST") hereby submits its comments in response to the Notice of Proposed Rulemaking¹ in this proceeding.

The Federal Communications Commission ("Commission") proposes to allow parties to submit comments electronically in rulemaking proceedings. U S WEST applauds this proposal. Properly implemented, it will enable the participants in Commission rulemaking proceedings to submit comments more efficiently and with fewer administrative and logistical difficulties. Participants who do not have a presence in Washington, D.C., will doubtless benefit the most. All participants will also benefit greatly by having the comments of others available to them nearly instantaneously, and in an electronic format conducive to word search. This will be particularly beneficial when a proceeding has a narrow window of time between comments and replies.

The Commission tentatively concludes that electronically filed comments

¹ In the Matter of Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, Notice of Proposed Rulemaking, FCC 97-113, rel. Apr. 7, 1997 ("Notice").

should have the same status under the rules as those submitted on paper.²

U S WEST supports that conclusion. If the Commission's initiative is to fulfill the potential benefits that it offers, comments filed electronically must have the same status as paper comments. If electronic comments have some lesser status, parties will use them far less frequently, and the benefits noted above will not materialize.

The Notice asks whether the ability to submit electronic comments should extend to the preliminary phases of a rulemaking proceeding, as well as to petitions for reconsideration and responsive comments or pleadings.³ U S WEST believes this will ultimately be necessary if the Commission's proposal is to fulfill its promise. However, we believe the Commission would do well to implement this proposal in phases. Once it has successfully implemented electronic filing for the principal phase of its rulemakings, the Commission can expand the program to include other steps in the overall process. U S WEST also agrees that the Commission should gather more experience with this process before it expands it to other types of proceedings.⁴ There is, however, no obvious reason not to utilize electronic filing in other proceedings.

U S WEST agrees with the Commission's tentative conclusion that participants should be required to file only one electronic "copy" of their comments. The process could be designed to route the comments directly to the appropriate

² Id. ¶ 9.

³ Id.

⁴ Id. ¶ 10.

persons within the Commission staff.⁵

We also agree with the tentative conclusion that a World Wide Web page form should be the primary mechanism for the electronic filing of comments, but only so long as the site has the capacity to handle the load.⁶ In a major rulemaking, dozens of parties will file comments many pages long, and most of them will do so at the last possible moment. The Web site must have the capacity to handle this flood of material in a reasonably timely fashion. And, of course, congestion elsewhere on the Internet will sometimes give rise to delays, regardless of the Web site's capabilities. To alleviate these concerns, we believe the Commission should accept filings that are received at any time on the due date; that is, participants should have until midnight, eastern time, to submit their comments to the Web site. Given that a filing of this sort requires no human intervention on the Commission's end, there is no good reason to limit filings to normal business hours.

Despite the potential problems associated with filing comments via a Web page, U S WEST believes it is easily superior to the other media mentioned in the Notice.⁷ A CD-ROM is a physical medium. Though a small disk might be somewhat easier to deliver to the Commission than a mound of paper, participants must still ensure delivery at a time when Commission staff are available to receive it. CD-ROM would thus deliver very few of the benefits potentially available with

⁵ Id. ¶ 12.

⁶ Id. ¶ 14.

⁷ Id.

electronic filing. Moreover, many participants will likely not have the wherewithal to record their filings on a CD-ROM. A dial-up bulletin board, though superior to a CD-ROM mechanism, would inflict the slower speeds of the public switched network on all participants, even if they happen to have a high-speed, direct connection to the Internet. We know of no countervailing benefits that would justify the use of this mechanism.

The Notice properly notes that the security and integrity of filings is a concern.⁸ It asks whether the Commission should adopt any special measures, such as encryption, digital signatures, or account numbers, to authenticate or secure filings.⁹ So long as the filing mechanism ensures that filings, once submitted, cannot be tampered with, U S WEST believes there is no immediate need for these safeguards. As the Notice acknowledges, fraudulent filings are at least potentially a problem even with an all-paper format, and it is up to participants to monitor their own filings for such practices. If and when a problem develops, the Commission can address it; to do so now would, in our judgment, be premature and any solution would likely be uninformed: not knowing what problems might truly arise, the Commission is ill-equipped at this juncture to devise a remedy. We hold the same belief relative to the potential for frivolous or abusive filings.¹⁰ If a problem develops, the Commission can address it, but there is no need for it to do so now.

⁸ Id. ¶ 15.

⁹ Id. ¶ 16.

¹⁰ Id. ¶ 17.

The Commission tentatively concludes that the filing date of a document must be the date it is actually received.¹¹ If there were some certain means of establishing the time and date of transmission, the Commission might reasonably use that date as the date of filing. Absent that, however, the Commission is correct that date of receipt must govern. In any case, the Commission must implement a confirmation mechanism as the Notice proposes. Absent that, participants will not know whether their comments have been received, and they will likely resort to making a backup paper filing just to be certain, thereby destroying much of the benefit of electronic filing.

The Notice tentatively concludes that, in situations requiring service of a pleading on a specific party, the Commission will continue to require service by means of paper documents, unless the party has indicated a willingness to receive documents electronically.¹² U S WEST believes the Commission has little choice as to that; if a party is unable to get access to an electronically-filed document, serving it in that fashion would be fundamentally unfair. We suggest, however, that parties be allowed to indicate their willingness to accept service electronically by the simple expedient of including an electronic-mail address in their filings; a party's agreement to accept electronic service should be limited to the specific proceeding for which it has agreed to that method of service.

The Notice requests input regarding specific procedures the Commission

¹¹ Id. ¶ 18.

¹² Id. ¶ 20.

should adopt.¹³ U S WEST believes the filing system should accommodate all generally-used word processing and spreadsheet systems, such as Word, Word Perfect and Excel, in all current and former versions.

The inconsistent page breaks that will be inherent in this system raise two potential problems, page limits and references. The reference problem is easily resolved by instituting a requirement for paragraph numbers, as the Notice suggests.¹⁴ Page limits are a thornier problem. The Commission could simply base the limit on the printed number of pages using the application used by the filing party. This could lead to inconsistent results, but we doubt the variance will be so great as to result in significant prejudice to any party. In the alternative, the Commission might translate its page limits into word counts and impose limits in that fashion. Word processing systems typically have automatic word-count features, making such a system relatively easy to implement. To monitor compliance, the Commission could require each party to certify the word count in the certificate of service on each filing made electronically.¹⁵

The Notice asks how service requirements for the Commissioners and the Bureau responsible for a particular proceeding should be handled.¹⁶ U S WEST believes the simplest answer to this would be to establish a separate electronic-mail

¹³ Id. ¶ 22.

¹⁴ Id.

¹⁵ If the Commission adopts a word-count limit, its rules must specify which portions of the filing count against the limit (e.g., whether the count must include section headings, summaries, table of contents, etc.).

¹⁶ Notice ¶ 22.

address for each Commission party who might need to be served. The filing party could then simply address a copy to each necessary party at the Commission. Alternatively, the filing party could indicate on the filing the specific Commission parties to be served, leaving it to the Commission staff to perform the actual delivery.

The Commission needs also to address the matter of non-electronic attachments to filings. Parties frequently attach pre-existing documents and even non-paper materials (e.g., video tapes, computer discs) to their filings. The system must include a means to ensure that such attachments are properly combined with the filing they belong to. Otherwise, parties will be forced to utilize paper filings when they have such attachments.

We note that the system should provide a capability for the public to access the electronically-filed documents and to perform word searches, both at the Web site and on downloaded documents. The Web site should also indicate whether paper filings have been submitted and how they can be obtained.

Finally, we urge the Commission (and those participating in rulemaking proceedings) to maintain an open mind regarding this endeavor. Problems – including some no one has yet foreseen – will inevitably crop up. Resolving them

will require adjustments to the system. With patience and flexibility the system can be made to work, to the ultimate benefit of all participants.

Respectfully submitted,

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May 21, 1997

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that on this 21st day of May, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be filed electronically with the Office of the Secretary of the FCC via mailbox <<http://www.fcc.gov/comments/commurls.html>> and to be served via hand-delivery upon the persons listed below.*

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